

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL ANTHONY McVAY,

Plaintiff,

v.

FRANKLIN COUNTY, CAPTAIN RICK LONG,
SHERIFF RICHARD LATHIM, SGT LESLIE
MONROE, OFC ALFREDO DESANTIAGO, CPL
YVETTE BRIONES, CPL JEREMY JANSKY,
OFC PATRICK HADDOX, OFC SANDRA
CLARK, OFC CESAR RIVERA, OFC MAYRA
ROMERO, RN ILLENE ALEXANDER and RN
CONNIE RODE,

Defendants.

No. 4:14-CV-5056-EFS

**ORDER DISMISSING LAWSUIT WITHOUT
PREJUDICE SUBJECT TO CONDITIONS**

Following a telephonic hearing¹ on pro se Plaintiff Paul Anthony McVay's Motion to Dismiss Civil Complaint, ECF No. 114, and Motion for Courts Not to Consider Motion to Dismiss as Motion for Summary Judgment

¹ The telephonic hearing occurred on April 11, 2016. Participating by phone were Mr. McVay, Christopher Mertens for Defendants Illene Alexander and Connie Rhode, and John Justice for the other Defendants. Attorney Gary Metro also participated telephonically at the request of the Court.

1 by Plaintiff, ECF No. 116, the Court dismisses this lawsuit without
2 prejudice.

3 The telephonic hearing was conducted to ensure that Mr. McVay
4 seeks dismissal of this lawsuit even though Mr. Metro has not guaranteed
5 Mr. McVay that he will file a lawsuit on Mr. McVay's behalf to assert
6 claims pertaining to the alleged facts underlying this lawsuit.
7 Mr. McVay confirmed that he seeks dismissal of this lawsuit in order to
8 provide Mr. Metro with additional time to review the record and the
9 discovery conducted thus far so that he can determine whether he will
10 represent Mr. McVay and file a lawsuit regarding the underlying facts.
11 See Metro Decl., ECF No. 121. Rather than proceed pro se in this lawsuit,
12 Mr. McVay desires voluntary dismissal of this lawsuit without prejudice.
13 If Mr. McVay continued this pro se lawsuit, he would need to respond to
14 Defendants' pending summary-judgment motions, ECF Nos. 106 & 111.

15 After hearing from Mr. McVay and reviewing the record, the Court
16 finds Mr. McVay's dismissal request is knowing, intelligent, and
17 voluntary. Defendants do not oppose dismissal without prejudice,
18 understanding that the Court has the authority to grant dismissal
19 without prejudice at this time, but Defendants ask the Court to impose
20 certain conditions on the dismissal.

21 Federal Rule of Civil Procedure 41(a)(2) permits the court to
22 dismiss a lawsuit at the plaintiff's request "on terms the court
23 considers proper." Fed. R. Civ. P. 41(a)(2). Unless the order states
24 otherwise, a dismissal under Rule 41(a)(2) is without prejudice. *Id.* A
25 court should grant a plaintiff's motion for voluntary dismissal unless
26 a defendant can show that it will suffer plain legal prejudice as a

1 result. *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th
2 Cir. 1982). Plain legal prejudice is a high standard and is not satisfied
3 simply because a defendant faces the prospect and inconvenience of a
4 second lawsuit or because a plaintiff will gain a tactical advantage.
5 *Id.* at 145-46. However, a court may award costs to a defendant to reduce
6 resulting economic prejudice to that defendant. *Id.* at 145; *Mitchell-*
7 *Jones v. Menzies Aviation, Inc.*, No. C-10-1190JLR, 2011 WL 3273221, at
8 4 (W.D. Wash. July 28, 2011).

9 After considering Mr. McVay's request for a voluntary dismissal
10 and statements at the hearing, under this lenient Rule 41(a)(2)
11 standard, the Court dismisses this lawsuit without prejudice. But the
12 Court finds it appropriate to impose the following requested conditions:

- 13 1. If Mr. McVay re-files the same or a substantially similar
14 lawsuit in any other court, he or his counsel may not object
15 to Defendants' use of any discovery conducted, exchanged, or
16 obtained in this litigation on grounds that the discovery
17 was not conducted, exchanged or obtained in the re-filed
18 suit; and
- 19 2. If Mr. McVay re-files the same or a substantially similar
20 lawsuit in any other court, he shall bear Defendants'
21 reasonable attorney's fees and costs from this lawsuit for
22 discovery, motions practice, or any other items, which
23 Defendants are able to demonstrate cannot be used in the
24 future litigation (the court presiding over the re-filed
25 action will have jurisdiction to hear Defendants' motion for
26 reasonable attorney's fees and costs).

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Mr. McVay's Motion to Dismiss Civil Complaint, **ECF No. 114**,
3 and Motion for Courts Not to Consider Motion to Dismiss as
4 Motion for Summary Judgment by Plaintiff, **ECF No. 116**, are
5 **GRANTED**.

6 2. All other pending motions are **DENIED AS MOOT**.

7 3. All hearings and trial are **STRICKEN**.

8 4. This lawsuit is **DISMISSED** without prejudice subject to the
9 above-listed conditions on page 3.

10 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
11 Order and provide a copy to counsel, Plaintiff Paul Anthony McVay
12 (Inmate No. 824869, Clallam Bay Corrections Center, 1830 Eagle Crest
13 Way, Clallam Bay, WA 98326), and Gary Metro (719 Jadwin Ave., Richland,
14 WA 99352).

15 **DATED** this 12th day of April 2016.

16
17 s/Edward F. Shea
18 EDWARD F. SHEA
19 Senior United States District Judge
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